

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOHN E. ANDRUS MEMORIAL, INC. (d/b/a ANDRUS ON
HUDSON),

Plaintiff,

-against-

RICHARD F. DAINES, as Commissioner of the New York
State Department of Health,

Defendant.

2007 Civ. 3432 (CLB)(MDF)

AFFIDAVIT OF BRIAN T.
McGOVERN IN
OPPOSITION TO
DEFENDANT'S MOTION
FOR SUMMARY
JUDGMENT

STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

BRIAN T. McGOVERN, being duly sworn, deposes and says:

1. I am a member of the bar of this Court and am employed by Cadwalader, Wickersham & Taft LLP, attorneys for the plaintiff John E. Andrus Memorial, Inc. d/b/a Andrus on Hudson (the "Andrus") in this action.

2. The purpose of this affidavit is to place before the Court true copies of the following documents, submitted in opposition to defendant's motion for summary judgment:

(a) Annexed as Exhibit A is a true copy of Defendant's Responses and Objections to Plaintiff's First Request for Production of Documents and Interrogatories dated July 2, 2007 and served on July 2, 2007;

(b) Annexed as Exhibit B is a true copy of a letter from David Sandman of the Commission on Health Care Facilities in the 21st Century to Dan Heim of the New York Association of Homes and Services for the Aging dated March 17, 2006 with attachment,

bearing bates stamp numbers “AND 0615” through “AND 0619”, and produced by defendant in response to Plaintiff’s First Request for Production of Documents and Interrogatories on July 2, 2007;

(c) Annexed as Exhibit C is a true copy of the Complaint of St. Joseph Hospital of Cheektowaga filed in the action entitled St. Joseph Hospital of Cheektowaga v. Antonia Novello, New York State Supreme Court, Erie County Index No. 11568/06; and

(d) Annexed as Exhibit D is a true copy of the order of Judge Orazio Bellantoni in the action entitled Community Hospital at Dobbs Ferry v. Antonia Novello, New York State Supreme Court, Westchester County Index No. 24650/06, dated July 10, 2007.

WHEREFORE, I respectfully request that the Court deny defendant’s motion for summary judgment.

s/Brian T. McGovern
Brian T. McGovern

Sworn to before me this
13th day of August, 2007.

Notary Public